IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1131 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5

NARAN SHARMA RABARI KATARIA

Versus

STATE OF GUJARAT

Appearance:

MR GONDALIA FOR MR YOGESH S LAKHANI for Petitioner

MR.GOHIL ASSISTANT PUBLIC PROSECUTOR

for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/02/99

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the validity of the show cause notice, Annexure "A" dated 23.6.1998, the order of externment, Annexure "B" dated 29.8.1998 and the order of the Appellate Authority,

Annexure "C" dated 16.11.1998.

The brief facts giving rise to this writ petition are that a show cause notice, Annexure "A" was issued to the petitioner on 23.6.1998 to show cause why in view of registration of two criminal cases under various sections of the Indian Penal Code and statements of two witnesses he should not be externed from the districts, Porbandar, Amreli, Rajkot Rural as well as city area for a period of two years. Upon service of notice the petitioner appeared and filed reply to the show cause notice and examined five witnesses in defence. The Externing Authority passed the impugned order against the petitioner and externed him for a period of two years from the aforesaid districts. An appeal was preferred by the petitioner which was dismissed. Hence this revision.

The show cause notice and the two impugned orders have been assailed by the learned Counsel for the petitioner on five grounds. After hearing the arguments of the learned Counsel for the petitioner and the learned Assistant Government Pleader, I find that all the five grounds have force and substance.

The first contention has been that the statements of two confidential witnesses are quite vague and even the extracts of those statements were not supplied to the petitioner, as a result of which he was prevented from submitting effective reply in his defence. From the grounds of detention it appears that two witnesses stated something against the petitioner's activities but what was in their mind regarding the antisocial activities of the petitioner was not disclosed in the show cause notice. Very vague narration has been given and the place, date and time, for which these witnesses stated against the petitioner, have not been given in the show cause notice. On such vague disclosure the petitioner was certainly prevented from furnishing effective reply in his defence. Para 3(c) of the counter affidvit of the Externing Authority is hardly any improvement over the vague statements of the two witnesses mentioned in the show cause notice. If the show cause notice mentions vague particulars, it is rendered invalid.

Other allegations against the petitioner in the opening portion of the show cause notice are equally vague. The area of operation and the period of operation have not been given. Simply by mentioning that the petitioner was operating in Veraval it cannot be said that specific area of operation of the petitioner was disclosed in the notice. Thus, the show cause notice is

rendered invalid hence further action on such vague notice will also be rendered invalid rendering the impugned orders of the Externing Authority and the Appellate Authority invalid.

Non supply of entire material to the petitioner has also prevented him from furnishing effective reply. The extracts of the statements of two confidential witnesses were not furnished to the petitioner.

The third ground is that five witnesses were examined by the petitioner in his defence. Their statements in defence were neither considered by the Externing Authority nor by the Appellate Authority. The Externing Authority has simply mentioned in its order as a recital of fact that five witnesses were examined by the petitioner but there is no discussion what were the statements of those five witnesses and why they were not being relied upon. On the other hand, it shows that the statements in defence and the defence evidence were not at all considered by the Externing Authority. The Appellate Authority has observed that the Detaining Authority has considered the staements of the defence witnesses but this is factually incorrect in as much as the order of the Externing Authority itself shows that defence evidence was not considered by him. It is thus clear that neither the Externing Authority nor the Appellate Authority considered the defence evidence and onesided order passed upon consideration of evidence of the complainant cannot be sustained. If some reasons would have been given for not relying upon the defence evidence the two orders could be said to be valid. But in the absence of assigning any reason for not relying upon or for rejecting the defence evidence the two impugned orders cannot be said to be valid. The Externing Authority and the Appellate Authority were exercising powers and functions of quasi judicial authorities hence they were expected to consider the entire material on record. Since this was not done the principles of natural justice were violated and the impugned orders are rendered invalid.

The next contention has been that lesser drastic alternative remedy was not considered by the Externing Authority. It was pointed out that three chapter cases, two under section 107 of the Code of Criminal Procedure and one under section 110 of the Code of Criminal Procedure were registered against the petitioner in the year 1998 and these preventive actions are already pending. No reason has been given why in face of pendency of these preventive actions externment of the

petitioner was called for. In my opinion, if these preventive remedies and actions are pending against the petitoner he could be effectively dealt with by directing him to file personal and surety bonds for showing good behaviour for a period of one year. The Externing Authority in counter affidavit para 3(g) has tried to explain this but the explanation offered is not sufficient. Once the chapter cases aforesaid were disclosed in the show cause notice it should have been mentioned in the show cause notice that these preventive actions which were lesser drastic in nature could not have served the purpose of preventing the petitioner from indulging in similar nefarious and criminal activities. It is thus a case where alternative remedies were not effectively and properly considered by the Externing Authority and this has rendered the impugned order invalid.

Another contention has been that no reasons for externment of the petitioner from adjoining districts have been given. The learned Assistant Government Pleader has contended that reasons have been given and those reasons are that in this age when fast means of conveyance are available the petitioner could have operated in Veraval and Junagadh from the adjoining districts of Rajkot, Porbandar etc. This is however, no sufficient reason for passing the externment order against the petitioner for four districts. It has affected, curtailed and restricted the freedom of movement of the petitioner from four districts. For doing so, some cogent material should have been placed on record and cogent reasons should have been given. The petitioner has been branded as member of gang of criminals. There is no material that any member of the gang is having headquarter or is operating from districts Rajkot, Porbandar, Amreli etc. As such, merely by observing that since fast means of conveyance are available the petitioner could have operated from adjoining districts cannot be considered to be sufficient reason based on any material on record for externment of the petitioner from adjoining or contiguous districts. This has also rendered the order of externment illegal.

For the reasons stated above, the show cause notice, the order of externment and the order of the Appellate Authority, Annexures "A" to "C" cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The show cause notice and the order of Externing Authority and the order of Appellate Authority are hereby quashed.

Sd/-
(D.C.Srivastava,J)

m.m.bhatt